

## REMARKS

In the application claims 2, 5, 6, 11-14 and 61-67 remain pending and presently stand rejected.

The reconsideration of the rejection of the claims is, however, respectfully requested.

The pending claims presently stand rejected under 35 U.S.C. § 103 as being rendered obvious primarily in view of Janky as modified by the teachings of Sass (U.S. Patent No. 6,823,225) as further modified by the teachings of Malladi (U.S. Patent No. 5,815,206).

In response to the rejection it is respectfully submitted that none of Janky, Sass, or Malladi disclose, teach, or suggest at least the expressly claimed method step that functions to avoid interruption of media playback by controlling flow *from the server* of the subsequent portion of the digital media.

That Janky fails to disclose, teach, or suggest at least this claimed element has been acknowledged in the Office Action.

While the Office Action has asserted that Sass teaches non-interrupted media playback *generally*, it is respectfully submitted that Sass fails to specifically disclose, teach, or suggest at least the expressly claimed method step that functions to avoid interruption of media playback by controlling flow *from the server* of the subsequent portion of the digital media. Rather than disclose this claimed element, Sass, *in direct contrast to that which is claimed*, discloses a system in which the server merely flows a media file to the playback device *without any control being provided to the flow from the server so as to avoid interruption of playback on the playback device*. (Col. 5, lines 49-60). Accordingly, it is respectfully submitted that nothing from Sass, which teaches directly against the invention claimed when considered in its entirety, can be said to teach or suggest modifying Janky to arrive at the invention claimed when the invention claimed is considered “as a whole.”

Considering now Malladi, while Malladi may *generally* disclose the use of firmware to control the flow of data from one storage area to another, Malladi, like Sass, fails to specifically disclose, teach, or suggest at least the expressly claimed method step that functions to avoid interruption of media playback by controlling flow *from the server* of the subsequent portion of the digital media. More particularly, Malladi, like Sass, discloses a system in which the server merely flows portions of the digital media file *without any control being provided to the flow from the server so as to avoid interruption of playback on the playback device*. (See Fig. 1B, element 100). Accordingly, it is respectfully submitted that nothing from Malladi, which teaches directly against the invention claimed when considered in its entirety, can be said to teach or suggest modifying Janky to arrive at the invention claimed when the invention claimed is considered “as a whole.”

In sum, it is respectfully submitted that the rejection of the claims fails to present a *prima facie* case of obviousness for the reason that it has not been demonstrated (or even asserted) that all of the claimed elements may be found in the references being relied upon. More specifically, it is respectfully submitted that the rejection of the claims reflects the impermissible distilling of the invention down to its “gist” or “thrust” while ignoring what is claimed “as a whole” (i.e., ignoring the method step that functions to avoid interruption of media playback by controlling flow *from the server* of the subsequent portion of the digital media). For at least these reasons it is respectfully submitted that the rejection of the claims must be withdrawn.

## CONCLUSION

It is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the Examiner is respectfully requested. Should it be determined, however, that a telephone conference would expedite the prosecution of the subject application, the Examiner is respectfully requested to contact the attorney undersigned.

The Commissioner is authorized to charge any fee deficiency or credit overpayment to deposit account 50-2428 in the name of Greenberg Traurig.

Respectfully Submitted;



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